175 (3)

No. 10 - 496

Supreme Court, U.S.
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In the Supreme Court of the United States

ROBERT WHITE, PRO SE,

Petitioner,

v.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Special Counsel for the Chapter 7 Trustee for
CK LIQUIDATION CORP,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the First Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

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Petitioner's Supplemental Brief

Petitioner, Robert White (hereafter "White"), submits this Supplemental Brief to notify this Court of two important developments in this case which occurred after White filed his writ of certiorari.

The Bankruptcy Judge Recused Himself Sua Sponte

On October 1, 2010, while White's motion for reconsideration en banc to the First Circuit Court of Appeals was pending, the original Bankruptcy Judge for the past seven (7) years in this case, the Honorable Henry J. Boroff, recused himself sua sponte [1], without notice [2], motion, or a hearing. White discovered Judge Boroff's recusal on November 10, 2010, well after filing his writ of certiorari, while reviewing the bankruptcy docket in preparation for filing White's reply brief.

Additionally, and also too late to disclose in White's writ of certiorari, the First Circuit Court of Appeals finally ruled on White's motion for reconsideration en banc, denying that request [3] on November 1, 2010, exactly one month after Judge Boroff recused himself.

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1 Attached hereto as Addendum #1.

2 The bankruptcy notice center only sent notice of Judge Boroff's recusal to the debtor. Judge Boroff copied his recusal order to the debtor and its counsel, US Trustee, chapter 7 trustee, and unsecured creditors committee counsel.

3 Attached hereto as Addendum #2.

Lateness and Lack of Notice of Judge Boroff's Recusal Violates White's Right to Due Process

Judge Boroff recused himself, without sufficient notice, while White's motion for reconsideration en banc was still pending before the First Circuit Court of Appeals. Both White and the Circuit Court should have been noticed of Judge Boroff's recusal. Lack of notice and such a late recusal has denied White his right to make Judge Boroff's recusal an issue on appeal to the Circuit Court and this Court.

Judge Boroff Self Recusal Was Late

Most circuits require that a motion for disqualification be brought at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim, see *Pontarelli v. Stone*, 978 F.2d 773 (1st Cir. 1992). Certainly the same requirement for promptness applies to self recusal. Judge Boroff waited two years to recuse himself after entry of this last order in this case, which was Mintz & Levin's final fee award, which is the subject of White's writ of certiorari. The Bankruptcy Court docket in this case has been devoid of any activity whatsoever for the past two years since entry of Mintz & Levin's final fee award except for entries related to this appeal (and now Judge Boroff's recusal). No new parties have appeared in this case since the appointment of the successor trustee in 2006 or the appointment of Respondent in 2005.

The most logical conclusion to be drawn from these facts is that Judge Boroff's sua sponte recusal indicates he was concerned over the appearance of impropriety in the way he adjudicated Mintz & Levin's final fees, given no new parties or issues have surfaced in this case during the past two years that might precipitate such deep introspection leading to self recusal. It is a consequence of timing, and not just a coincidence, that Judge Boroff's recusal implicates the impropriety of his final fee award to Mintz & Levin pursuant to 28 U.S.C. § § 455(a) or (b)(1). It is axiomatic that "justice delayed is justice denied" and Judge Boroff's recusal two years after the event which precipitated the appearance of impropriety is a failure to recuse in a timely manner.

Judge Boroff Recusal Voids His Orders Issued Immediately Prior to His Sua Sponte Recusal

In *Liljeberg v.Health Services Acquisition Corp.*, 486 U.S. 847 (1988) this Court held that Federal Rule of Civil Procedure 60(b), authorizing relief from a final judgment, is an appropriate remedy for a trial court's improper failure to recuse. Additionally, in *Standard Oil Co. Of Cal. V. United States*, 429 U.S. 17 (1976), this Court ruled that an appellant may file a motion to vacate in the trial court pursuant to Rule 60(b) even after the appeal had been decided by the Supreme Court.

Judge Boroff's sua sponte recusal is all the more reason why Petitioner's writ of certiorari should be granted; however, in the alternative it is just as appropriate for this Court to remand this case

with instructions for Bankruptcy Judge reassigned to this case, the Honorable William C. Hillman, to issue an Order to Show Cause why the final fee award of Mintz & Levin should not be vacated. Judge Boroff's sua sponte recusal has created just as ripe an issue for this Court's consideration as White's original appeal of Mintz & Levin's final fee award given that said recusal is inextricably intertwined with the issues on appeal.

White's Writ Should Be Granted

Mintz & Levin began its employment for the estate with unwaivable actual conflicts of interest requiring disgorgement of all fees. Then, as the case progressed, Mintz & Levin became further conflicted by leading the prosecution of the Bankruptcy Court's sua sponte sanctions against Harold Bowers [4]. In the aftermath Mintz & Levin billed the estate to negotiate and author the sanction settlement agreement with Mr. Bowers [5] after claiming authority to do so under the Bankruptcy Court's power to levy sua sponte attorney fee sanctions pursuant to case law and Rule 9011 [6]. Now,

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4 Appellant's BAP Appendix, pg. 12, ln. 15 - 17 - Docket #891: Transcript Mintz & Levin final fee hearing.

5 BC Docket #767, pg. 8 - Joint Application for Order Approving Settlement Agreement, signed and submitted by Richard Mikels, Bankruptcy Department Chair at Mintz & Levin.

6 BC Docket #767, pg. 1.

concerned over the appearance of impropriety the Bankruptcy Court has recused itself from further participation in this case.

The simplest remedy to these multiple maladies is the reversal of Mintz & Levin's final fee order due to unwaivable actual conflicts of interest between the estate and its co-counsel which in turn impaired and conflicted Mintz & Levin's dual representation of the estate and Bankruptcy Court while prosecuting the Bankruptcy Court's sua sponte sanctions.

Respectfully submitted on November 17, 2010, by

Robert White

Robert White - pro se

Addendum #1

United States Bankruptcy Court
District of Massachusetts

In re:	)	
	)	
CK LIQUIDATION CORP.	)	Chapter 7
	)	
Debtor	)	Case No. 03-44906-HJB
	)	

ORDER OF RECUSAL

The Court hereby recuses itself from Case Number 03-44906 and any associated Adversary Proceedings and directs the Clerk to reassign the aforementioned Case pursuant to Massachusetts Local Bankruptcy Rule 5001-1(d).

Dated: October 1, 2010

By the Court,
/s/Henry J. Boroff
Henry J. Boroff
United States Bankruptcy Judge

CC: Debtor, Counsel to the Debtor, United States trustee, chapter 7 trustee, Counsel to the Official Committee of Unsecured Creditors

Addendum #2

United States Court of Appeals
For the First Circuit

No.09-9020

IN RE: CK LIQUIDATION CORPORATION, d/b/a Baystate Technologies, Inc. f/k/a Cadkey Corporation

Debtor.

ROBERT WHITE
Appellant,
v.
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C.
Appellee.

Before
Lynch, Chief Judge, Torruella *, Boudin, Stahl, Lipez, Howard and Thompson, Circuit Judges.

ORDER OF COURT
Entered: November 1, 2010

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court: /s/Margared Carter, Clerk.

* Judge Torruella is recused and did not participate in the determination of this matter.

cc: Robert Storey White, Erin T. Fontana, Stephen Moeller-Salley, James W. Wilton, Charles Azano, Richard E. Mikels, Eric Kempton Bradford, Christopher M. Candon.